

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

In re POLYURETHANE FOAM ANTITRUST LITIGATION)	
)	MDL Docket No. 2196
)	Index No. 10-MD-2196 (JZ)
)		
This document relates to:)	
)	
ALL CASES)	
)	

**NOTICE OF STIPULATION AND
[PROPOSED] AMENDED JOINT SCHEDULING ORDER**

The Direct Purchaser (Class) Plaintiffs, Indirect Purchaser (Class) Plaintiffs, and the non-settling Defendants submit jointly the attached proposed order, through which the parties respectfully request that the Court extend the remaining deadlines set forth in the Amended Scheduling Order (Dkt. 354).¹ Having reached agreement on the attached proposal, these parties are making this submission in lieu of the simultaneous submissions contemplated by the Court's July 27, 2012 Minute Order.

The proposed order and the scheduling adjustments therein are intended to address certain circumstances that were unknown when the deadlines in the Amended Scheduling Order were stipulated by the parties and then set by the Court.

First, discovery to date has progressed to a significantly lesser extent than contemplated by the Amended Scheduling Order and other discovery orders entered by the Court. Although all Defendants involved in the *Urethane* litigation have completed

¹ The stipulating counsel conferred with liaison counsel for the Direct Action Plaintiffs about joining this stipulation, and understand that the Direct Action Plaintiffs will be submitting a letter with their comments on the stipulation by Tuesday, August 14, 2012.

their production of documents from that case, and at least three of the non-settling Defendants here have substantially completed, or made significant progress toward completing, their production of documents in response to Plaintiffs' first and second sets of document requests.² The remaining Defendants' productions vary in their stage of completeness. Several have made multiple partial productions, a few remain at the initial stages of document production. Likewise, most Plaintiffs remain in the early stages of production. While a number have produced some transactional data, only a few have started non-transactional data productions. Deposition discovery has not yet commenced and several key discovery issues now require the Court's input.

The slower than anticipated pace of discovery reflects that this is a complex case with many, differently situated parties and massive discovery burdens. Despite the somewhat slower pace of discovery, a great deal has been accomplished and the cumulative effects of those accomplishments should begin to expedite the discovery process generally.

Second, as this Court is aware, the U.S. Department of Justice Antitrust Division will be closing its Cleveland field office – the office that is currently handling the pending investigation. *See Exhibit 1 to the Proposed Order.* The schedule distributed to Division staff on July 20, 2012 requires the affected offices to begin a review of all active and closed matters within 31 days, and to complete that review (*i.e.*, either closing or transferring all active matters) within 6 months. *See id.* The schedule provides that the offices will close within 211 days (approximately 7 months) – on or around February 20, 2013. Defendants believe that this “transfer or close” process is likely to yield greater

² The two settling Defendants have also produced the substantial majority of their document productions pursuant to their settlement agreements with Plaintiffs.

clarity as to the outcome of the pending investigation and the potential impact, if any, of that investigation on this case.

The Parties have attempted in their proposed Order to address these two circumstances by, among other things:

- 1) requiring all parties (other than the phased and focused Defendants) to substantially complete the production of transactional data by the end of September 2012, and substantially complete the production of documents in response to now pending Requests by the end of November 2012, to permit these materials to be reviewed and analyzed in advance of depositions;
- 2) requesting an in-person status conference with the Court in February 2013, to update the Court on the status of the government investigation and its potential impact on discovery going forward;
- 3) providing that prior to the February 2013 status conference, any deposition discovery will be limited to such non-merits topics as document and data production;
- 4) moving the deadline for class certification motions to early June 2013, and correspondingly adjusting the other pretrial deadlines; and
- 5) providing that prior to February 2013, the parties can schedule depositions for dates between the February 2013 status conference and the June 2013 class certification deadline.

The parties respectfully request that the Court enter the proposed order in the form attached hereto.

Dated: August 10, 2012

Respectfully submitted,

/s/ Stephen R. Neuwirth
Stephen R. Neuwirth
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Phone: 212-849-7165
Fax: 212-849-7100

/s/ William A. Isaacson
William A. Isaacson
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, NW
Washington, DC 20015
Phone: 202-237-5607
Fax: 202-237-6131

Direct Purchaser (Class) Plaintiffs' Interim Co-Lead Counsel

/s/ Marvin A. Miller
Marvin A. Miller
MILLER LAW LLC
115 South LaSalle St., Suite 2910
Chicago, Illinois 60603
Phone: 312-332-3400
Fax: 312-676-2676

Interim Lead Counsel for Indirect Purchaser (Class) Plaintiffs

/s/ James H. Walsh
James H. Walsh
Howard Feller
Bethany Lukitsch
MCGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: (804) 775-4356
Fax: (804) 698-2200
jwalsh@mcguirewoods.com
hfeller@mcguirewoods.com
blukitsch@mcguirewoods.com

*Counsel for Carpenter Co., E.R.
Carpenter, L.P., and Carpenter Holdings,
Inc.*

/s/ Kendall Millard
Kendall Millard
BARNES & THORNBURG, LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
Phone: (317) 231-7461
Fax: (317) 231-7433
kmillard@btlaw.com

/s/ Michael D. Mustard
Michael D. Mustard
BARNES & THORNBURG LLP
600 One Summit Square
Fort Wayne, IN 46802-3119
Phone: (260) 423-9440
Fax: (260) 424-8316
mmustard@btlaw.com

Counsel for Flexible Foam Products, Inc.

/s/ Frank A. Hirsch, Jr.

Frank A. Hirsch, Jr.
Matthew P. McGuire
ALSTON & BIRD LLP
4721 Emperor Blvd.
Suite 400
Durham, NC 27703
Phone: (919) 862-2200
Fax: (919) 852-2260
frank.hirsch@alston.com
matt.mcguire@alston.com

*Counsel for Hickory Springs
Manufacturing Company*

/s/ Edward G. Warin

Edward G. Warin
John P. Passarelli
KUTAK ROCK LLP
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000
Fax: (402) 346-1148
edward.warin@kutakrock.com
john.passarelli@kutakrock.com

Counsel for Future Foam, Inc.

/s/ Francis P. Newell

Francis P. Newell
Peter M. Ryan
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Phone: (215) 665-2118
Fax: (215) 665-2013
fnewell@cozen.com
pryan@cozen.com

Counsel for Foamex Innovations, Inc.

/s/ Daniel R. Warncke

Daniel R. Warncke
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Phone: (513) 381-2838
Fax: (513) 381-0205
warncke@taftlaw.com

Joe Rebein
SHOOK, HARDY & BACON LLP
2555 Grand Blvd.
Kansas City, MO 64108
Phone: (816) 559-2227
jrebein@shb.com

Counsel for Leggett & Platt, Incorporated

/s/ Randall L. Allen

Randall L. Allen
Teresa T. Bonder
Allison S. Thompson
ALSTON & BIRD LLP
One Atlantic Center
1201 W. Peachtree St.
Atlanta, GA 30309
Phone: (404) 881-7000
Fax: (404) 881-7777
randall.allen@alston.com
teresa.bonder@alston.com
allison.thompson@alston.com

Counsel for Mohawk Industries, Inc.

/s/ Richard A. Duncan

Richard A. Duncan
Emily E. Chow
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh St.
Minneapolis, MN 55402-3901
Phone: (612) 766-7000
Fax: (612) 766-1600
rduncan@faegre.com

Robert A. Bunda
Theresa R. DeWitt
BUNDA STUTZ & DEWITT PLL
3295 Levis Commons Boulevard
Perrysburg, OH 43551
Phone: (419) 241-2777
Fax: (419) 241-4697
rabunda@bsd-law.com
trdewitt@bsd-law.com

Counsel for Otto Bock Polyurethane Technologies, Inc.

/s/ Daniel G. Swanson

Daniel G. Swanson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Phone: (213) 229-6690
Fax: (213) 229-6919
dswanson@gibsondunn.com

Cynthia Richman
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Phone: (202) 530-8500
Fax: (202) 530-9651
crichman@gibsondunn.com

Counsel for Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., and Woodbridge Foam Fabricating, Inc.